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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,901	06/13/2006	Uwe Skultety-Betz	3719	5001
7590	12/04/2009		EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NJ 11743			RATCLIFFE, LUKE D	
		ART UNIT	PAPER NUMBER	
		3662		
			MAIL DATE	DELIVERY MODE
			12/04/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/582,901	SKULTETY-BETZ ET AL.
	Examiner	Art Unit
	LUKE D. RATCLIFFE	3662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 June 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 June 2006 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolf (WO2004020941) using Stierle (20050151957) for translation.

Referring to claim 1, Wolf shows a device for optical distance measurement, in particular a handheld device (figure 1), having an emission branch (figure 2 Ref 68) which defines an emission channel and has at least one emission unit (figure 2) for emitting modulated optical radiation (paragraph 3) in the direction of a target object (figure 2 Ref 46), having a reception branch (figure 2 Ref 48) which defines a reception channel (figure 2) and has at least one receiver (figure 2 Ref 88), and having a reference branch (figure 2 Ref 72) which defines a reference path (figure 2), and having switch means (figure 2 Ref 70) for deflecting the measurement signal between the emission branch and the reference branch, characterized in that the switch means are mechanically driven (mirrors moved mechanically in the beam path).

Referring to claim 2, Wolf shows he switch means are driven by mechanical work that is to be performed by a user at a user control element of the device (simply pressing the measurement button allows the system to cycle through the reference beam, paragraph 36).

Referring to claim 3, Wolf shows the switch means) are operated by the measurement button for performing a distance measurement (paragraph 36).

Referring to claim 4, Wolf shows the switch means are to be actuated counter to the restoring force of an adjusting moment (figure 2 shows the restoring force is gravity and thus the switching means brings the mirrors up against this force).

Referring to claim 6, Wolf shows he switch means are embodied such that the measurement radiation traverses the reference path, if the switch means are not activated (figure 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf (WO2004020941) using Stierle (20050151957) for translation.

Wolf shows a device for optical distance measurement, in particular a handheld device (figure 1), having an emission branch (figure 2 Ref 68) which defines an emission channel and has at least one emission unit (figure 2) for emitting modulated optical radiation (paragraph 3) in the direction of a target object (figure 2 Ref 46), having a reception branch (figure 2 Ref 48) which defines a reception channel (figure 2) and has at least one receiver (figure 2 Ref 88), and having a reference branch (figure 2 Ref 72) which defines a reference path (figure 2), and having switch means (figure 2 Ref 70)

for deflecting the measurement signal between the emission branch and the reference branch, characterized in that the switch means are mechanically driven (mirrors moved mechanically in the beam path). However Wolf is not clear when switch means closes the emission branch. It would be obvious to have the switch means close the emission branch in the event that the measurement button for activating a distance measurement is not activated because this allows the system to not transmit the light but to avoid a constant switch on and off of the light source during continued use. This is well known and adds no new or unexpected results.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf (WO2004020941) using Stierle (20050151957) for translation in view of Shull (3953113).

Wolf shows a device for optical distance measurement, in particular a handheld device (figure 1), having an emission branch (figure 2 Ref 68) which defines an emission channel and has at least one emission unit (figure 2) for emitting modulated optical radiation (paragraph 3) in the direction of a target object (figure 2 Ref 46), having a reception branch (figure 2 Ref 48) which defines a reception channel (figure 2) and has at least one receiver (figure 2 Ref 88), and having a reference branch (figure 2 Ref 72) which defines a reference path (figure 2), and having switch means (figure 2 Ref 70) for deflecting the measurement signal between the emission branch and the reference branch, characterized in that the switch means are mechanically driven (mirrors moved mechanically in the beam path). However Wolf does not show he switch means are to be actuated counter to the force of at least one spring-elastic element.

Shull shows a similar device that includes a switching means is actuated counter to the force of at least one spring-elastic element (column 3 line 30-55). It would have been obvious to modify Wolf to include the spring elastic element as shown by Shull because this allows the system to work in any dimensional configuration without having to rely on gravity and this is a combination of prior art elements according to known methods to yield predictable results.

Response to Arguments

Applicant's arguments filed 7/7/09 have been fully considered but they are not persuasive. Referring to the argument that Wolf does not show the switch means are driven by mechanical work that is to be performed by a user at a user control element of the device: Wolf shows a trigger element that the user mechanically presses to actuate an electric motor that then controls the switch means, this satisfies the statement that the switch means are driven by mechanical work that is to be performed by the user because the claim does not stipulate that the mechanical work done by the user is the same mechanical work that then switches the switching means. The Examiner would like to input that while Wolf does not show this mechanical work done by the user that directly control the switching means, mechanical work is done by the user, that work then drives the mechanically driven switch by translating the mechanical work into electrical work and back into mechanical work.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUKE D. RATCLIFFE whose telephone number is (571)272-3110. The examiner can normally be reached on 10:00-5:00 M-Sun.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on 571-272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LDR

/Thomas H. Tarcza/
Supervisory Patent Examiner, Art Unit 3662